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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 MASSACHUSETTS MUTUAL LIFE
13 INSURANCE COMPANY,

14 Plaintiff,

15 v.

16 WEALTH TRANSFER PLANNING,
INC., a California Corporation,

17 Defendant.
18
19

Case No. 07 CV 844 JM (BLM)

JOINT MOTION FOR PROTECTIVE
ORDER RE CONFIDENTIAL
INFORMATION AND RELATED
MATTERS; AND ~~PROPOSED~~
PROTECTIVE ORDER

20 **PROTECTIVE ORDER**

21 In connection with the production of confidential information, testimony, and
22 documents in this action, Plaintiff MASSACHUSETTS MUTUAL LIFE
23 INSURANCE COMPANY ("MassMutual") and Defendant WEALTH TRANSFER
24 PLANNING, INC. ("Wealth Transfer") (collectively the "Parties"), through their
25 respective counsel, hereby enter into this Joint Motion for Protective Order Re
26 Confidential Information and Related Matters (the "Protective Order").
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1 **I. PURPOSE OF THE PROTECTIVE ORDER.**

2 The purpose of this Protective Order is to prevent the public disclosure of
 3 information that is claimed by any of the Parties to be confidential, including, but
 4 not limited to, information which is subject to Patient Privacy Rules and regulations;
 5 individually identifiable patient and medical information protected from disclosure
 6 by the Health Insurance Portability and Accountability Act of 1996 and federal
 7 regulations regarding standards for privacy of individually identifiable health and
 8 medical information adopted pursuant to said Act (collectively "HIPAA");
 9 information protected by California's Confidentiality of Medical Information Act,
 10 employee confidentiality rules and regulations; and other information that may be
 11 regarded as confidential under generally recognized principles relating to the
 12 confidentiality in the litigation context. Any unauthorized disclosure of
 13 Confidential Information as defined herein in violation of the Order shall be subject
 14 to discipline by the contempt power of this Court.

15
 16 **II. DEFINITION OF "CONFIDENTIAL INFORMATION."**

17 The term "Confidential Information" shall include all information, documents,
 18 and other materials revealed or disclosed during this lawsuit (the "Litigation") that
 19 are designated as "Confidential Information" in the manner set forth in Section III of
 20 this Order. Such designation shall, without more, subject the designated material to
 21 the provisions of this Protective Order, and all such provisions of this Order. The
 22 Parties and their counsel shall make designation in good faith.

23 Except as specifically authorized by this Court, Confidential Information shall
 24 not be disclosed or revealed to anyone not authorized by this Protective Order to
 25 receive such material and shall be used only for the purpose of preparing for or
 26 conducting the Litigation. All persons to whom such material is disclosed (as
 27 permitted by the Protective Order), with the exception of court personnel and court
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1 reporters, shall be informed of and shown a copy of this Protective Order and be
2 bound by it.

3
4 **III. DESIGNATION OF CONFIDENTIAL MATERIAL.**

5 Any party or non-party who produces documents or information, provides
6 written discovery responses, or testifies in this action may designate such
7 documents, responses, testimony or information as "Confidential" in accordance
8 with the provisions of this section.

9 **A. Criteria for Classification.**

10 1. Confidential Information includes but is not limited to: (a)
11 patient and/or insured information and records, including but not limited to
12 individually identifiable information regarding a patient and/or insured; (b)
13 proprietary business and financial information; (c) trade secrets; (d) employee
14 information and records; (e) any other information the disclosure of which may
15 cause harm to the business, competitive or personal position of the person,
16 partnership, corporation or other organization firm which the information is
17 obtained, or to the patient to whom the information pertains; and (f) materials which
18 have been produced or created in other litigation to which the Parties and their
19 respective affiliated companies are or have been parties.

20 **B. Time of Designation.**

21 Unless otherwise agreed between counsel for the Parties, the designation of
22 Confidential Information shall be made at the following times:

23 1. For documents or things, at the time of the production of
24 documents or things;

25 2. For declaration, written discovery responses, and pleadings, at
26 the time of the service or filing, whichever occurs first;

27 3. For testimony, at the time that such testimony is given by a
28 statement designating the testimony as "Confidential" made on the record or in the

1 case of deposition testimony, within the time the witness has to review the
2 transcript.

3 4. For documents or information already provided, within thirty
4 (30) days of the date of this Protective Order;

5 5. Notwithstanding the provisions of paragraphs II(B)(1), a party is
6 not required to designate a document or things as containing Confidential
7 Information prior to producing the document or thing to the receiving party for
8 inspection, but may so mark or designate the document or thing subsequent to the
9 inspection, and prior to providing the receiving party with a copy of any requested
10 document or thing. Documents and things produced for inspection and containing
11 Confidential Information shall be inspected only by persons entitled to receive
12 Confidential Information pursuant to paragraph IV(A) hereof. Between the time of
13 inspection and the time of receipt of a copy of any requested document or thing
14 containing Confidential Information, such information contained therein shall not be
15 disclosed or used, except in accordance with the provisions of this Protective Order.

16 To the extent one of the Parties or non-party does not timely designate
17 documents, testimony or information as Confidential Information, such Party or
18 non-party may so designate documents testimony or information as provided under
19 paragraph (C) below.

20 **C. Manner of Designation.**

21 The designation of Confidential Information shall be made in the following
22 manner:

23 1. For documents, by placing the notation "Confidential" on each
24 page of such documents;

25 2. For tangible items, by placing the notation "Confidential" on the
26 object or container thereof or if impracticable, as otherwise agreed by the Parties;

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1 3. For declarations, written discovery responses, court filings or
2 pleadings, by placing the notation "Confidential" both on the face of such document
3 and on any particular designated pages of such document; and

4 4. For testimony, by orally designating such testimony as being
5 "Confidential" at the time the testimony is given. Thereafter, the original and all
6 copies of the "Confidential" portions of the transcript of any such testimony shall be
7 separately bound and marked by the court reporter with the legend
8 "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER."
9 Such transcript and testimony shall be disclosed and used only in accordance with
10 the provisions of this Protective Order. At the request of Counsel for the
11 designating party supplying the Confidential Information, only persons entitled
12 under paragraph IV(A) as to Confidential Information shall be permitted to attend
13 that portion of a deposition or hearing wherever or whenever any such Confidential
14 Information of such designating party is used or elicited from the deponent or
15 witness.

16 **D. Subsequent Designation.**

17 Good faith failure to designate and/or mark any document, testimony or
18 information as "Confidential" shall not preclude the designating party from
19 thereafter making such a designation and requesting the receiving party to so mark
20 and treat such documents, testimony, or information so designated. Such
21 designation or withdrawal, and accompanying request, shall be made in writing.
22 After designating documents, testimony or information that were not previously
23 designated as "Confidential," such documents, testimony, or information shall be
24 fully subject to this Protective Order. The receiving party and its counsel, however,
25 shall incur no liability for disclosures made prior to receipt of notice of such
26 designations.

27 The inadvertent disclosure of any document which is subject to a legitimate
28 claim that the document should have been withheld from disclosure as a privileged

1 attorney-client communication, or attorney work product, or by reason of some
 2 other discovery limitation authorized or permitted by California law, shall not
 3 waive the privilege for that document if the producing party requests its return and
 4 took reasonable precautions to avoid such inadvertent disclosure. Any such
 5 privileged or work product document inadvertently disclosed shall be returned to the
 6 producing party upon written request, together with all copies of any such
 7 documents.

8
 9 **IV. USE OF CONFIDENTIAL INFORMATION.**

10 Except upon the prior written consent of the producing party, or upon further
 11 Order of this Court, the receiving party shall treat Confidential Information strictly
 12 in accordance with the provisions of this Protective Order and may use or disclose
 13 such materials only as specified in this Protective Order.

14 **A. Disclosure of Information Designated as "Confidential."**

15 Access to Confidential Information shall be limited to:

- 16 (a) Counsel for the party, secretarial and other litigation support
 17 personnel reporting directly to them.
- 18 (b) Outside experts and consultants (and their employees or clerical
 19 assistants) who are employed, retained or otherwise consulted by
 20 the party to assist in any way in the preparation and trial of the
 21 Litigation.
- 22 (c) Court personnel in the conduct of their official duties, after a
 23 Court Order.
- 24 (d) Qualified persons taking testimony involving Confidential
 25 Information and necessary stenographic and clerical personnel
 26 thereof.
- 27 (e) Duplicating services, and auxiliary services of a like nature,
 28 routinely engaged by counsel.

1 Nothing in this Joint Motion and Order shall preclude a party from disclosing
2 its own Confidential Information to the extent it deems appropriate.

3 **B. Declassification of Confidential Information.**

4 If any of the Parties, at the time, wishes to have the "Confidential
5 Information" designation of any documents, testimony, or information removed, that
6 party shall first request such declassification in writing to all parties, including a
7 statement of the reasons for the request. If there is any dispute over whether any
8 document, testimony or information should be so declassified, the Parties shall
9 attempt to resolve the dispute in good faith. If the Parties are unable to agree upon a
10 designation, the party seeking declassification may move the Court by noticed
11 motion or *ex parte* application for an order removing or changing the designation;
12 provided, however, that the party seeking declassification of the Confidential
13 Information must provide advance notice to all parties of at least twenty-one (21)
14 days regarding its intent to file the motion. In addition, the party seeking
15 declassification of any documents, testimony, or information shall have the burden
16 of proving that said documents, testimony, or information was improperly
17 designated as Confidential Information. If such motion is made, the Parties shall
18 treat the documents, testimony, or information as originally designated until the
19 motion is decided by the Court.

20 **C. Disclosure to the Court and Filing Under Seal.**

21 The use or submission of Confidential Information to the Court shall be in
22 accordance with Local Rule 79.2. Unless authorized by statute or federal rule,
23 Confidential Information may be used or submitted to the Court under seal only
24 after prior approval by the Court. Where such Court approval is required, a written
25 application and proposed order shall be submitted to the Court along with the
26 document submitted for filing under seal. Any document that contains Confidential
27 Information must be submitted in a sealed envelope with a copy of the title page
28 attached to the front of each envelope and in accordance with Local Rule 79.2.

1 Confidential Information submitted under seal in accordance with Local Rule
 2 79.2 may be used in such manner as permitted by the Court, subject to any
 3 restrictions imposed by the Court to reasonably protect such confidentiality.

4 **D. Duplicates of Confidential Information.**

5 Copies, duplicates, extracts, summaries, and descriptions of Confidential
 6 Information shall be treated with the same degree of confidentiality as the original
 7 material and shall be subject to the terms and conditions of this Order.

8 **E. Exclusions From Confidential Information.**

9 Nothing in this Protective Order shall be construed as finding that any
 10 material designated as Confidential Information actually constitutes or contains
 11 proprietary or confidential information or trade secrets. For purposes of this Order,
 12 proprietary or confidential information or trade secrets shall not include information
 13 or material that: (a) was, is or becomes public knowledge in a manner other than by
 14 violation of this Order; (b) is acquired from a third party having the right to disclose
 15 such information or material; or (c) was lawfully possessed by the receiving party
 16 prior to the receipt from the supplying party.

17
 18 **V. RETURN OF CONFIDENTIAL INFORMATION.**

19 Within sixty (60) days of final termination of this Litigation, all persons to
 20 whom Confidential Information has been disclosed shall, without demand, either
 21 destroy or return to the providing party all such material (and all copies of such
 22 material) and all other documents containing information taken from that material.
 23 All recipients of Confidential Information shall certify in writing that they have
 24 complied with the provisions of this paragraph. Final termination of this litigation is
 25 defined as the date on which all appeals have been exhausted.

26 Notwithstanding the foregoing provisions of this section, counsel may retain
 27 copies of pleadings, briefs, motions, and the like actually filed in court that include
 28 Confidential Information, but such litigation documents shall be used only for the

1 purpose of preserving a record of the action, and shall not, without the written
 2 permission of the opposing party or an order of this Court, be disclosed to anyone
 3 other than those to whom such information was actually disclosed, in accordance
 4 with this Protective Order, during the course of this action.

6 **VI. SURVIVAL**

7 This Protective Order shall survive the final termination of the Litigation and
 8 continue in full force and effect, ~~and the Court shall retain jurisdiction to enforce~~
 9 ~~this Protective Order.~~

10

11 **VII. PROCEDURE AFTER RESOLUTION**

12 Within sixty (60) days after conclusion of this matter (including any appellate
 13 proceedings), all "Confidential Information," except as specified below, shall be
 14 destroyed by the recipient or returned to the Designating Party, at the election of the
 15 Designating Party. All notes, drafts, memoranda, documents, work papers and other
 16 materials prepared by attorneys or experts that contain or reflect the content of any
 17 "Confidential Information" may be destroyed or retained by the attorneys or the
 18 experts, but if retained must be treated in accord with this Order.

19 The provisions of this Order shall remain in full force and effect after the
 20 entry of final judgment in this case (including any appellate proceedings). The Court
 21 will retain jurisdiction, ~~both before and after entry of final judgment in this case, to~~
 22 construe, enforce and amend the provisions of this Order.

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24 **VIII. ENFORCEMENT**

25 Except as otherwise provided herein, all parties and persons to whom
 26 "Confidential Information" is disclosed are enjoined from using the "Confidential
 27 Information," except in preparation for and trial of this action and are further
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1 enjoined from disclosing "Confidential Information" to any other person, except in
2 accord with the provisions of this Order.

3 Intentional breach of the provisions of this Protective Order shall be subject to
4 sanctions as authorized by statute, rule and the inherent power of this Court.

5
6 Dated: June 21, 2007

MESERVE, MUMPER & HUGHES LLP
Linda M. Lawson
Brian K. Mazen
Frederic Esrailian

7
8
9 By: /s/Frederic Esrailian

10 Frederic Esrailian
11 Attorneys for Plaintiff
12 MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY

13 Dated: June 21, 2007

SPARBER RUDOLPH ANNEN
Richard Annen
Mike Jacobs

14
15 By: Michael W. Jacobs

16 Mike Jacobs
17 Attorneys for Defendant
18 WEALTH TRANSFER PLANNING,
INC.

19 **ORDER**

20 Based upon the above Joint Motion, and good cause appearing,

21 IT IS HEREBY ORDERED that the above Protective Order in force, and that
22 the Parties and persons to whom Confidential Information is released shall be
23 subject to and bound by the terms and conditions of this Protective Order.

24
25 Dated: 6/26/07

Barbara L. Major
The Honorable Jeffrey Miller
United States District Judge

27 **BARBARA L. MAJOR**
28 **U.S. MAGISTRATE JUDGE**

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 South Grand Avenue, 24th Floor, Los Angeles, California 90071-3185.

On June 22, 2007, I served on interested parties in said action the within:

**JOINT MOTION FOR PROTECTIVE ORDER RE CONFIDENTIAL
INFORMATION AND RELATED MATTERS; AND [PROPOSED]
PROTECTIVE ORDER**

by placing a true copy thereof in sealed envelope(s) addressed , as stated below. and causing such envelope(s) to be deposited in the U.S. Mail at Los Angeles, California.

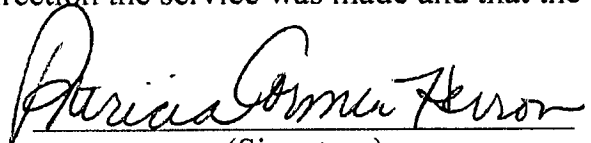
Richard J. Annen, Esq.
Mike Jacobs, Esq.
Sparber Rudolph Annen APLC
701 B. St #1000
San Diego, CA 92101-8109

I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on June 22, 2007, at Los Angeles, California.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Patricia Cormier Herron
(Type or print name)


(Signature)